

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DAVID GENE MERKEY, JR.,)	
)	
Plaintiff,)	
vs.)	NO. CIV-08-1070-D
)	
BRANDON WESTERN,)	
)	
Defendant.)	

ORDER

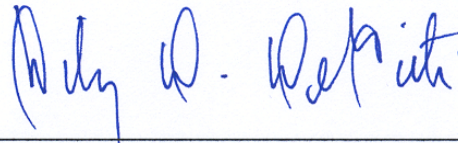
Plaintiff, an inmate appearing *pro se*, brought this action pursuant to 42 U.S.C. §1983; he contends that his constitutional rights were violated while he was confined at the Oklahoma County Jail. In accordance with 28 U.S.C. §636(b)(1)(B), the matter was referred to United States Magistrate Judge Robert E. Bacharach for initial proceedings. The defendant filed a Motion to Dismiss/Motion for Summary Judgment, to which the plaintiff did not respond.

On January 30, 2009, Judge Bacharach filed a Report and Recommendation [Doc. No. 14] in which he recommended that this action be dismissed without prejudice because the record reflects that Plaintiff failed to exhaust his available administrative remedies prior to filing the Complaint. In the Report and Recommendation, the Magistrate Judge advised the parties of their right to object to the same, set a February 19, 2009 deadline for filing objections, and cautioned the parties that a failure to timely file objections would result in a waiver of the right to appellate review of the matters determined in the Report and Recommendation. That deadline has expired, and no objection has been filed.

Accordingly, the Report and Recommendation [Doc. No. 14] is adopted as though fully set forth herein. This action is dismissed without prejudice to the filing of a new action after the

plaintiff fully exhausts his available administrative remedies.

IT IS SO ORDERED this 26th day of February, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE